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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL LOZANO MORAN,

Defendant and Appellant.

C046068

(Sup.Ct.No. NCR61189)

Defendant Miguel Lozano Moran argued with his sister over property issues after their father's death. When the argument turned physical, defendant grabbed a two-by-four and hit his sister in the head. She was treated at a hospital.

Defendant pleaded guilty to assault with a deadly weapon by means likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).) The trial court granted the prosecution's motion to dismiss the remaining counts and special allegation in accordance with the plea agreement.

At sentencing, the trial court found that the factors in mitigation outweighed those in aggravation and sentenced defendant to the low term of two years in prison. It awarded defendant nine days of presentence credit and "order[ed] the fines and fees as they were recommended by the probation officer except the fines in [Penal Code sections] 1202.4 and 1202.45 [were] \$400 not \$600." The probation department had also recommended that the defendant pay a \$20.00 security fee pursuant to Penal Code section 1465.8 in addition to the fines recited by the court at sentencing. It clarified that the parole revocation fine should "be stayed upon successful completion of parole."

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we conclude imposition of the \$20 court security fee under Penal Code section 1465.8 violates the ex post facto clauses of the state and federal constitutions.¹ The type of ex post facto law

¹ Penal Code section 1465.8 reads in part:

"(a) (1) To ensure and maintain adequate funding for court security, a fee of twenty dollars (\$ 20) shall be imposed on

implicated in this case has been variously described by the U.S. Supreme Court as "any statute which . . . makes more burdensome the punishment for a crime, after its commission" (*Collins v. Youngblood* (1990) 497 U.S. 37, 42 [111 L.Ed.2d 30, 39] citing *Beazell v. Ohio* (1925) 269 U.S. 167 [70 L.Ed. 216]) or, more recently, "'[e]very law that *changes the punishment*, and inflicts a *greater punishment*, than the law annexed to the crime, when committed'" (*Carmell v. Texas* (2000) 529 U.S. 513, 522 [146 L.Ed.2d 577, 588] citing *Calder v. Bull* (1798) 3 U.S. [3 Dall.] 386, 390-391 [1 L.Ed. 648] italics in original).

Defendant committed the crime on July 17, 2003. The Legislature enacted Penal Code section 1465.8 as urgency legislation operative on August 17, 2003, one month later. (Stats. 2003, ch. 159 (Assembly Bill No. 1759), §§ 25, 27, pp. 1, 23, 24.) The fee applies to all criminal convictions "[t]o ensure and maintain adequate funding for court security." (Pen. Code, § 1465.8, subd. (a)(1).) Imposing the \$20 security fee on defendant after July 17, 2003, made punishment for violation of Penal Code section 245, subdivision (a)(1) more

every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. [¶] . . . [¶] (b) This fee shall be in addition to the state penalty assessed pursuant to Section 1464 and may not be included in the base fine to calculate the state penalty assessment as specified in subdivision (a) of Section 1464. . . ."

burdensome than when the crime was committed. We shall modify the judgment to strike the court security fee.

We find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to strike the \$20 court security fee, and affirmed as modified.

MORRISON, J.

We concur:

BLEASE, Acting P.J.

ROBIE, J.